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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/627,902

07/25/2003

Roger Moons

AD6883USNA

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EXAMINER

BECKER, DREW E

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

05/13/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-Legal.PRC@usa.dupont.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/627,902	<b>Applicant(s)</b> MOONS, ROGER	
	<b>Examiner</b> Drew E. Becker	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

The declaration under 37 CFR 1.132 filed 1/24/08 is insufficient to overcome the rejection of claims 1-10 based upon Nakamichi or WO 01/34702A2 as set forth in the last Office action because: Dr. Citron failed to include any evidence with the declaration. In addition, there were no experiments performed with respect to Nakamichi. Paragraph 12 of the declaration amounts to an "opinion" that Nakamichi might not meet the limitation in some instances, rather than a statement of fact that it positively did not.

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of copending Application No. 11/293,568. Although the conflicting claims are not identical, they are not patentably distinct from each other because the thermal conductivity range of claim 1 in '568 (ie 0.70 W/mK) fully encompasses the presently claimed range of 1.0 W/mK or more in claim 1.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 01/34702A2.

WO 01/34702A2 teaches an ovenware item comprising a thermoplastic polymer with a filler (abstract), the filler being carbon black containing graphite (page 8, lines 8-13), up to 10% carbon black (page 9, line 11), the item inherently possessing a thermal conductivity of at least 2 W/mK, the polymer having a melting point and glass transition temperature of at least 250°C (page 5, lines 21-34), liquid crystal polymers (page 6, line 17). If not inherent, then it would have been obvious to one of ordinary skill in the art to

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provide more carbon black in WO 01/34702A2 since an increased amount of susceptor filler would have provided increased and faster browning of the food product during microwaving.

5. Claims 1-10 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nakamichi [Pat. No. 5,028,461]. Nakamichi teaches a an ovenware item comprising a thermoplastic polymer with a filler (abstract), the filler being carbon black containing graphite (column 3, line 53), up to 70% carbon black (abstract), the item inherently possessing a thermal conductivity of at least 2 W/mK, and the polymer having a heat distortion temperature of at least 270°C (column 4, line 54). If not inherent, then it would have been obvious to one of ordinary skill in the art to provide more carbon black in Nakamichi since an increased amount of susceptor filler would have provided increased and faster browning of the food product during microwaving, as well as better heat resistance, oil resistance, and mechanical strength (abstract).

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Meroni [Pat. No. 6,830,769] teaches a polymer ovenware item with a stiffening element within it.

### ***Response to Arguments***

7. Applicant's arguments filed 1/24/08 have been fully considered but they are not persuasive.

Applicant argues that the ODP rejection over 10/293,568 required a two-way test due to administrative delays on the part of the USPTO. However, applicant has not shown any evidence/proof of this delay. Therefore, only a one way test is required for the ODP rejection. In this instance, all of the claim limitations of the instant independent claim 1 are found in claim 1 of 10/293,568.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the amount, thermal conductivity, and particular form of the filler) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that the WO 01/34702A2 did not provide a thermal conductivity of 1.0 W/mK. However, WO 01/34702A2 taught a carbon fibers and carbon black of up to 10% and applicant does not claim a minimum amount of filler. The declaration of Dr. Citron tested a composition with only 8% carbon fiber, rather than the 10% of WO 01/34702A2 and did not provide any evidence for these tests. In addition, page 4, line 5 of applicant's specification states that "Typically the high thermal conductivity filler is about 5 to about 65% by weight of the composition." Therefore, the material of WO 01/34702A2 inherently provided the desired properties absent clear evidence to the contrary.

Applicant argues that Nakamichi did not teach a sufficient amount of filler. However, Nakamichi teaches an amount of inorganic filler, such as carbon black and

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carbon fiber (column 3, line 53), in the amount of 10-90% of the glass fiber (column 3, line 67), with the glass fiber making up 20-70% of the composition (column 4, line 1). Clearly, 90% of 70% is 63%. Therefore, Nakamichi clearly teaches the use of up to 63% carbon fiber or carbon black. Nakamichi also teaches a minimum inorganic filler content of 40% (column 4, line 18). In addition, page 4, line 5 of applicant's specification states that "Typically the high thermal conductivity filler is about 5 to about 65% by weight of the composition." In addition, applicant has graciously supplied 3<sup>rd</sup> party references to reinforce the above rejection, such as references C, E, F, and G which were submitted along with applicant's response of 1/24/08. These references, as well applicant's own admission on page 6, lines 3-8, teach that a minimum level of 28-50% of carbon filler was required to meet claim 1. Clearly, Nakamichi teaches a carbon level of up to 63% as shown above.

Applicant argues that Nakamichi included a "laundry list" of inorganic fillers. However, Nakamichi only listed 14 possible choices with two of them being carbon black and carbon fibers.

Applicant argues that Nakamichi was not capable of using 63% carbon black or carbon fiber. However, Nakamichi clearly states that 20-70% of the resin composition was filler (glass fiber and other), and that the amount of other filler (for instance carbon black) was present in an amount of 10-90% of the weight of the glass fiber (column 3, line 56 to column 4, line 3). Clearly, 90% of 70% is 63%. Therefore, the material of Nakamichi inherently provided the desired properties absent clear evidence to the contrary.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/  
Primary Examiner, Art Unit 1794